HAT v. PAT (NO 2)

HIGH COURT MALAYA, KUALA LUMPUR
EVROL MARIETTE PETERS J
[DIVORCE PETITION NO: WA-33-614-12-2023]
23 DECEMBER 2024

Abstract – *(i) Divorce proceedings should unfold within a jurisdiction deeply intertwined with the parties' lives, histories and circumstances. By doing so, it ensures a framework that is not only fair and equitable, but also firmly grounded in legal soundness, providing the most fitting context for resolving the complex issues at hand. When both parties are Malaysian citizens, their marriage solemnised within Malaysia and are both domiciled in Malaysia, Malaysia's jurisdiction to adjudicate the divorce proceedings between the parties is beyond question; (ii) Under Malaysian law, the principle that a married woman assumes the domicile of her husband upon marriage remains applicable, irrespective of the couple's physical living arrangements. Even if the parties are living apart, the wife's domicile remains tied to her husband's for as long as the marriage subsists; and (iii) Given the advancements in modern technology, logistical challenges are no longer decisive factors. The widespread use of remote hearings and online trials, now accepted in legal systems globally, have proven to be both efficient and effective, allowing full participation without the need for physical presence. Thus, the inconvenience of distance alone is insufficient to justify moving the forum from Malaysia.*

CIVIL PROCEDURE: *Injunction – Anti-suit injunction – Application for anti-suit injunction restraining respondent from proceeding with divorce proceedings in Singapore court – Whether there was delay by petitioner in filing application – Whether petitioner already submitted to Singapore jurisdiction – Whether Malaysia natural forum to hear divorce proceedings – Whether Singapore proceedings would be vexatious or oppressive – Whether allowing application would offend principle of comity*

FAMILY LAW: *Divorce – Proceedings – Application for anti-suit injunction restraining respondent from proceeding with divorce proceedings in Singapore court – Whether there was delay by petitioner in filing application – Whether petitioner already submitted to Singapore jurisdiction – Whether Malaysia natural forum to hear divorce proceedings – Whether Singapore proceedings would be vexatious or oppressive – Whether allowing application would offend principle of comity*

This was an application by the petitioner-husband ('petitioner') ('encl. 25') for an anti-suit injunction to, among others, restrain the respondent-wife ('respondent') from proceeding with the divorce proceedings in the Family Justice Courts of Singapore, and from enforcing any order obtained in the

Singapore proceedings ('Singapore divorce proceedings') with regard to the marriage between the parties. The petitioner and the respondent ('parties'), both Malaysian citizens, were married in 2001 in Miri, Sarawak. In 2004, the parties moved to Australia. In 2005, a daughter was born and in 2007, the parties became parents to twins ('children'). In 2008, the family relocated to Singapore and in 2011, the petitioner returned to Malaysia to manage his businesses. In August 2023, the respondent initiated the Singapore divorce proceedings by filing for divorce in the Family Justice Courts of Singapore ('Singapore court'). In 2023, the petitioner filed for judicial separation in the Kuala Lumpur High Court ('judicial separation'). The petitioner then filed an application in Singapore for a stay of the Singapore divorce proceedings ('Singapore stay application') whilst the respondent filed an application in Singapore, for an anti-suit injunction ('Singapore anti-suit injunction application') against the petitioner. Both the applications were dismissed by the Singapore court, and as a result, the petitioner appealed against the dismissal of the Singapore stay application. In January 2024, the petitioner was granted leave by this court to issue a notice of divorce petition and to serve it on the respondent out of jurisdiction *via* the following methods, namely, personal service prepaid registered post, email or WhatsApp message ('court order'). In February 2024, the respondent filed an application ('respondent's application to set aside') to, *inter alia,* set aside service of the divorce petition on the basis that the same had not been duly served on the respondent, and a declaration that this court had no jurisdiction over the respondent in respect of the divorce proceedings in Malaysia ('Malaysian divorce proceedings'). The respondent's application to set aside was dismissed and she appealed against that decision. In addressing the question of whether this petitioner's application should be allowed, this court had to consider the following (i) whether Malaysia was the natural forum to hear the divorce proceedings, including the issues of maintenance and property division between the parties; (ii) whether the Singapore divorce proceedings would be vexatious or oppressive to the petitioner; (iii) whether allowing this application would offend the principle of comity; (iv) whether there was delay by petitioner in filing this application; and (v) whether the petitioner had already submitted to the Singapore jurisdiction.

Held (allowing application):

(1) The petitioner had taken proactive legal steps to address the potential jurisdictional conflict. Recognising the complications of having concurrent divorce proceedings in two competing jurisdictions, the petitioner filed the Singapore stay application on the ground of *forum non conveniens*. The petitioner's primary aim was to consolidate the divorce proceedings in a single, more suitable forum, thereby avoiding duplicative litigation, inconsistent rulings, and unnecessary costs. In June 2024, however, the Singapore court had dismissed both the petitioner's Singapore stay application and the respondent's Singapore

anti-suit injunction application, which sought to restrain the petitioner from pursuing his case in Malaysia. Following the dismissal of the Singapore stay application, the petitioner promptly filed this application, emphasising that his decision to file for divorce in Malaysia was driven by legitimate considerations of jurisdiction and fairness, rather than any collateral or improper purpose. The filing of this application was timely, with no indication of delay, bad faith, or any collateral purpose in the petitioner's decision to proceed in Malaysia. His actions were fully in accordance with the law and within the scope of his legal rights. (para 25)

(2) The act of filing applications in the Singapore court, on its own, did not necessarily indicate that the petitioner had submitted to Singapore's jurisdiction. Submission to jurisdiction requires a more definitive and unequivocal acknowledgment of the authority of the Singapore court, which was absent in this case. The petitioner had also explicitly demonstrated his resistance to the Singapore divorce proceedings by filing the Singapore stay application, signalling his lack of consent to the jurisdiction of Singapore. Moreover, when the Singapore stay application was dismissed by the Singapore court, the petitioner further reinforced his resistance by appealing against such dismissal. These actions reflected a clear and consistent stance against the Singapore jurisdiction rather than any acquiescence to it. The petitioner had consistently and explicitly contested the jurisdiction of the Singapore court. The petitioner had maintained a firm and deliberate stance against recognising the Singapore court as the appropriate forum for the Malaysian divorce proceedings. As such, the petitioner had submitted to the Singapore jurisdiction. (paras 26-35)

(3) Both parties are Malaysian citizens, their marriage was solemnised within Malaysia, and most critically, they are both domiciled in Malaysia. These elements firmly established Malaysia as the appropriate forum for resolving the matter. The concept of domicile, a cornerstone of jurisdiction in Malaysian family law, was pivotal in this case. Section 3(2) of the Law Reform (Marriage and Divorce) Act 1976 ('Law Reform (Marriage and Divorce) Act') underscored the legal framework governing domicile and its relevance to marital disputes, thereby reinforcing Malaysia's authority to hear and determine the proceedings. (paras 37 & 38)

(4) The petitioner, a Malaysian citizen born in Miri, Sarawak, was domiciled in Malaysia, thereby establishing a clear connection to the jurisdiction. Under Malaysian law, the principle that a married woman assumes the domicile of her husband upon marriage remains applicable. A married woman cannot establish a separate domicile independent of her husband upon marriage. Instead, she assumes a 'domicile of dependence', which aligns with her husband's domicile. This principle

applies, irrespective of the couple's physical living arrangements, meaning that even if the parties are living apart, the wife's domicile remains tied to her husband's for as long as the marriage subsists. The respondent, by virtue of her marriage to the petitioner, was deemed to share his domicile. As the petitioner was domiciled in Malaysia, the respondent had, in turn, acquired a domicile of dependence in Malaysia. This legal linkage underscored her connection to the jurisdiction and reinforced Malaysia's authority to adjudicate the matter. The principle ensured that marital domicile, as a legal construct, remained consistent and unambiguous during the subsistence of the marriage. Moreover, the dismissal of the Singapore anti-suit injunction application by the Singapore court reflected a broader judicial consensus on this jurisdictional issue. In rejecting such application, the Singapore court implicitly endorsed Malaysia's position as the appropriate forum for resolving the dispute. (paras 37-44)

(5) The parties' marriage in Malaysia was a pivotal event that deepened their connection to the country. The children also hold Malaysian citizenship, further underscoring the family's enduring legal and national affiliation with Malaysia. This lasting bond was significant, as both the marriage and the children's citizenship reflected the family's deeply rooted legal, cultural, and personal ties to the country. Despite residing in Singapore, the respondent's attempts to secure permanent residency there had been unsuccessful, highlighting that her legal affiliation remained firmly in Malaysia and reinforced Malaysia as her primary and enduring jurisdiction, both personally and legally. The petitioner's business ventures were predominantly operated in and from Malaysia, establishing Malaysia as the central hub for both his commercial activities and personal residence. This strong connection strengthened the case for Malaysia as the most appropriate forum for the divorce proceedings, particularly given the respondent's monetary claims against the petitioner. (paras 49-53)

(6) Given the advancements in modern technology, logistical challenges were no longer decisive factors. The widespread use of remote hearings and online trials, now accepted in legal systems globally, offers a practical solution to these concerns. Virtual proceedings have proven to be both efficient and effective in overcoming geographical barriers, allowing full participation without the need for physical presence. Thus, the inconvenience of distance alone was insufficient to justify moving the forum from Malaysia. The ability to hold remote hearings would ensure that both parties are able to access the judicial process without undue hardship, rendering the respondent's claims of inconvenience untenable. Malaysia was the natural and most appropriate forum for determining the divorce as it would unfold within a jurisdiction deeply intertwined with the parties' lives, histories and circumstances. (paras 55-60)

(7) To allow the respondent to proceed with the Singapore divorce proceedings, would be vexatious and oppressive to the petitioner, as it was evident that he would incur unnecessary costs in producing extensive documents and securing witnesses for the Singapore court, all of whom and which are based in Malaysia. Furthermore, once the Singapore court issues orders for the division of assets, any enforcement proceedings would need to be carried out in Malaysia. This would place the petitioner in an onerous and prejudicial position, as he would not only have to defend the Singapore proceedings but also attempt to register the Singaporean court orders in Malaysia before he could enforce them. The enforcement of these orders, specifically the Singapore court orders in Malaysia, would be burdensome. On the other hand, granting this application would not result in any injustice to the respondent. The Malaysian divorce proceedings would address all issues between the parties during a single hearing, providing a quicker resolution than the bifurcated ancillary relief process in Singapore, which could extend the legal proceedings. In contrast, the concurrent approach in Malaysia would ensure a more efficient conclusion. (paras 78-84)

(8) The principle of comity refers to the mutual respect and recognition that courts in one jurisdiction extend to the legal decisions, laws, and judicial proceedings of another jurisdiction. This principle is intended to foster cooperation and consistency, particularly in cases where parties, judgments, or laws span multiple countries or states. Since the reliefs sought in this application were against the respondent *in personam* and not directed at the Singapore court, such reliefs did not interfere with the judicial independence or processes of the Singapore court. Since Malaysia is the natural forum to hear the divorce proceedings between the parties, there was no violation of the principle of comity. (paras 93 & 94)

Case(s) referred to:

Airbus Industrie GIE v. Patel & Ors [1998] 2 All ER 257 ***(refd)***
Berjaya Industrial Berhad & Anor v. Public Bank (L) Ltd & Ors [1995] 4 CLJ 504 HC ***(refd)***
BSNC Leasing Sdn Bhd v. Sabah Shipyard Sdn Bhd & Ors & Another Appeal [2000] 2 CLJ 197 CA ***(refd)***
Charnley v. Charnley And Betty [1959] CLJU 12; [1959] 1 LNS 12 HC ***(refd)***
Khoo Kay Peng v. Pauline Chai Siew Phin [2014] 10 CLJ 403 HC ***(refd)***
Khor Cheng Wah v. Sungai Way Leasing Sdn Bhd [1997] 1 CLJ 396 CA ***(refd)***
Lesco Development Corp Sdn Bhd v. Malaysia Building Society Bhd [1987] 2 CLJ 290; [1987] CLJ (Rep) 160 SC ***(refd)***
Manokaram Subramaniam v. Ranjid Kaur Nata Singh [2008] 6 CLJ 209 FC ***(refd)***
Mobikom Sdn Bhd v. Inmiss Communications Sdn Bhd [2007] 3 CLJ 295 CA ***(refd)***
Neduncheliyan Balasubramaniam v. Kohila Shanmugam [1997] 4 CLJ 676 CA ***(refd)***

A *Ramesh Rajaratnam v. SL Sharlini Marnickam [2018] CLJU 1608; [2018] 1 LNS 1608 HC* ***(refd)***
Sasithorn Marot v. Bruno Marot & Anor [2019] 3 CLJ 583 HC ***(refd)***
Société Nationale Industrielle Aérospatiale v. Lee Kui Jak & Ors [1987] AC 871 ***(refd)***
Tan Chee Khuan v. Ivy Lee Poh Yoke [2022] CLJU 1197; [2022] 1 LNS 1197 HC ***(refd)***

B **Legislation referred to:**
Law Reform (Marriage and Divorce) Act 1976, ss. 3(2), 76, 107

Women's Charter 1961 [Sing], s. 112

For the petitioner-husband - Foo Yet Ngo, Kiran Dhaliwal, John Heng & Muhammad Naif Amal Zulkiflie; M/s Misyail Othman & Co
C *For the respondent-wife - Goh Siu Lin & Cheong Khai Ze; M/s Kee Sern, Siu & Huey*

Reported by Suhainah Wahiduddin

JUDGMENT

D **Evrol Mariette Peters J:**

Introduction

[1] This was an application ("this application") by the petitioner-husband in encl. 25 for an anti-suit injunction to, among others, restrain the
E respondent-wife from proceeding with the divorce proceedings in the Family Justice Courts of Singapore, and from enforcing any order obtained in the Singapore proceedings ("the Singapore divorce proceedings") with regard to the marriage between the parties.

[2] To protect the privacy of the parties concerned, and due to the
F sensitive nature of the issues involved, the petitioner-husband and respondent-wife have been anonymised in this judgment as HAT and PAT, respectively, whilst the children of the marriage have been anonymised as JAN, XAN and NAN, respectively.

The Factual Background

G **[3]** The petitioner and respondent (collectively, "the parties"), both Malaysian citizens, aged 55 and 41, respectively, at the time of the hearing of this application, were married in 2001 in Miri, Sarawak.

[4] In 2004, the parties moved to Australia. In 2005, a daughter was born
H to the parties, and in 2007, the parties became parents to twins, a boy and a girl (collectively, "the children"). In 2008, the family relocated to Singapore. However, in 2011, the petitioner returned to Malaysia to manage his businesses.

I

[5] In August 2023, the respondent initiated the Singapore divorce proceedings by filing for divorce in the Family Justice Courts of Singapore ("the Singapore court"). In October 2023, the petitioner filed for judicial separation in the Kuala Lumpur High Court ("the judicial separation"), but withdrew the application in December 2023, opting to file instead, a divorce petition ("the divorce petition").

[6] The petitioner then filed an application in Singapore for a stay of the Singapore divorce proceedings ("the Singapore stay application"), whilst the respondent filed an application, in Singapore, for an anti-suit injunction ("the Singapore anti-suit injunction application") against the petitioner. Both applications were dismissed by the Singapore Court, and as a result, the petitioner has appealed against the dismissal of the Singapore stay application.

[7] In January 2024, the petitioner was granted leave by this court to issue a notice of divorce petition and to serve it on the respondent out of jurisdiction *via* the following methods, namely, personal service, prepaid registered post, email, or WhatsApp message ("the court order").

[8] In February 2024, the respondent filed an application in encl. 17 ("the respondent's application to set aside") to, *inter alia*, set aside service of the divorce petition on the basis that the same had not been duly served on the respondent; and a declaration that this court has no jurisdiction over the respondent in respect of the divorce proceedings in Malaysia ("the Malaysian divorce proceedings"). The respondent's application to set aside was dismissed. She has since then filed an appeal against that decision.

[9] In June 2024, this application was filed.

The Issues

[10] In addressing the question of whether this application should be allowed on its merits, the court had to consider the following: (i) whether Malaysia is the natural forum to hear the divorce proceedings, including the issues of maintenance and property division between the parties; (ii) whether the Singapore divorce proceedings would be vexatious or oppressive to the petitioner; and (iii) whether allowing this application would offend the principle of comity.

[11] At the outset, however, this court had to address the issues of whether there was a delay by the petitioner in filing this application; and whether the petitioner had already submitted to the Singapore jurisdiction.

[12] This application was allowed with costs, for the following reasons.

Contentions, Evaluation, And Findings

Whether There Was Delay By Petitioner In Filing This Application

[13] At the outset, the court grappled with two fundamental questions regarding the application, namely, whether there was an undue delay in its filing and whether the filing was motivated by bad faith. These questions form the cornerstone of judicial scrutiny in cases where unnecessary delay and *mala fide* are critical to the court's decision-making process.

[14] Delay in filing an application can significantly affect the merits and admissibility of a litigant's case. Courts emphasise this aspect to ensure fairness and efficiency in judicial proceedings. When a party delays filing an application without reasonable justification, it may hinder the opposing party's ability to respond effectively and undermine the administration of justice. Hence, courts often consider delay as a factor that could potentially disentitle a party from obtaining the relief sought.

[15] The importance of addressing the element of delay was underscored in *Khor Cheng Wah v. Sungai Way Leasing Sdn Bhd* [1997] 1 CLJ 396; [1996] 1 MLJ 223, where Gopal Sri Ram JCA (as he then was) provided instructive guidance, in the following passages:

> **It is a cardinal principle of law, that when a litigant seeks the intervention of the court in a matter that affects his rights, he must do so timeously**. The maxim *vigilantibus*, *non dormientibus, jura subveniunt*, though having its origins in the Court of Chancery, is of universal application. Even in cases where a right is exercisable *ex debito justitiae*, a court may refuse relief to an indolent litigant.
>
> In all cases in which delay in approaching the court is in issue, the burden is upon the litigant who has delayed to render a satisfactory explanation for it.
>
> (emphasis added)

[16] In that case, His Lordship remarked on the judiciary's obligation to carefully evaluate whether the unreasonable delay had occurred and whether such delay had prejudiced the adverse party or had revealed a lack of good faith by the applicant. Such a principle aimed to balance the rights of litigants while preserving the integrity of the judicial process.

[17] However, I did not find any delay on the part of the petitioner in filing this application, for the following reasons.

[18] In October 2023, the petitioner was formally served with the cause papers pertaining to the Singapore divorce proceedings initiated by the respondent. At that juncture, the petitioner, adhering to his convictions and values as a Roman Catholic, sought a more reconciliatory approach. His initial filing of the judicial separation, in my view, reflected his desire to preserve the sanctity of the marriage, consistent with his religious beliefs, and to prioritise the well-being and stability of the children.

[19] The judicial separation also highlighted the petitioner's intent to minimise disruption in the lives of the children, recognising the potential emotional and psychological impact of a divorce on their upbringing. However, this approach was contingent upon the possibility of reconciliation or a mutual agreement to work towards preserving the marriage.

[20] Despite these efforts, the respondent's unequivocal decision to pursue divorce in the Singapore court underscored the irretrievable breakdown of the marriage. Faced with this reality, the petitioner was compelled to recalibrate his approach. Acknowledging the futility of the judicial separation under the circumstances and in recognition of the respondent's determination, the petitioner sought leave to dispense with the requirement to refer the matrimonial dispute to a reconciliatory body. This step was necessitated by the urgency of resolving the matter and the impracticality of pursuing reconciliation.

[21] In December 2023, the petitioner formally withdrew his petition for judicial separation and filed the divorce petition, marking a definitive shift in the course of the proceedings. This action reflected his acceptance that the marriage could no longer be salvaged and his intent to bring resolution to the dispute in a manner aligned with the realities of the situation.

[22] In the same month, the petitioner took proactive legal steps to address the potential jurisdictional conflict. Recognising the complications of having concurrent divorce proceedings in two competing jurisdictions, he filed the Singapore stay application on the grounds of *forum non conveniens*. The petitioner's primary aim was to consolidate the divorce proceedings in a single, more suitable forum, thereby avoiding duplicative litigation, inconsistent rulings, and unnecessary costs.

[23] In June 2024, however, the Singapore court had dismissed both the petitioner's Singapore stay application and the respondent's Singapore anti-suit injunction application, which sought to restrain the petitioner from pursuing his case in Malaysia.

[24] Following the dismissal of the Singapore stay application, the petitioner promptly filed this application, emphasising that his decision to file for divorce in Malaysia was driven by legitimate considerations of jurisdiction and fairness, rather than any collateral or improper purpose. He argued that Malaysia was the most appropriate forum to adjudicate the matrimonial dispute, considering factors such as the domicile of the parties, location of matrimonial assets, and interests of the children.

[25] After reviewing the chronology of events, I concluded that the filing of this application was timely, with no indication of delay, bad faith, or any collateral purpose in the petitioner's decision to proceed in Malaysia. His actions were fully in accordance with the law and within the scope of his legal rights.

Whether Petitioner Had Already Submitted To Singapore Jurisdiction

[26] The respondent argued that this application should be dismissed, asserting that the petitioner had already submitted to the jurisdiction of the Singapore court by filing certain applications there. In my view, this argument lacked merit for several reasons.

[27] Firstly, the act of filing applications in the Singapore court, on its own, did not necessarily indicate that the petitioner had submitted to Singapore's jurisdiction. Submission to jurisdiction requires a more definitive and unequivocal acknowledgment of the authority of the Singapore court, which was absent in this case.

[28] Secondly, the petitioner had explicitly demonstrated his resistance to the Singapore divorce proceedings by filing the Singapore stay application, signalling his lack of consent to the jurisdiction of Singapore. Moreover, when the Singapore stay application was dismissed by the Singapore court, the petitioner further reinforced his resistance by appealing against such dismissal. These actions reflected a clear and consistent stance against the Singapore jurisdiction rather than any acquiescence to it.

[29] After the Singapore stay application was dismissed, the petitioner promptly initiated this application, which, in my view, reflected his continued resistance to the jurisdiction of the Singapore court. His subsequent actions further underscored this position.

[30] It was brought to my attention that during the Singapore case conference in June 2024, the petitioner's Singapore solicitors had requested that directions for filing further pleadings be held in abeyance, citing the appeal filed against the dismissal of the Singapore stay application. This appeal demonstrated the petitioner's active contestation of the Singapore court's jurisdiction. However, this request was met with resistance from the respondent's Singapore solicitors, who insisted that the petitioner file his defence and counterclaim, despite the pending appeal against the decision of the Singapore court in dismissing the Singapore stay application.

[31] In response to the directions issued by the Singapore court, the petitioner filed his defence and counterclaim. However, this was a procedural step taken to comply with the Singapore court's directives and to safeguard his legal position in the event that the proceedings in Singapore moved forward. This action was not, and should not be interpreted as, a waiver of his objections to the jurisdiction of the Singapore court. The petitioner's reservations and resistance were consistently articulated and remained a matter of record in the Singapore divorce proceedings.

[32] Clearly, the petitioner's conduct did not support the conclusion that he had submitted to the jurisdiction of the Singapore court without reservation. His actions, including filing the appeal and noting his objections

on record, unequivocally indicated that his compliance with procedural requirements by the Singapore court was motivated by prudence rather than acquiescence.

[33] The petitioner's consistent refusal to submit to the jurisdiction of the Singapore court was also evident from his numerous declarations in his affidavits and the steps he had taken throughout these proceedings. His actions demonstrated a clear intention to challenge the jurisdiction of the Singapore court and to assert his position that Malaysia is the appropriate forum for resolving the matrimonial dispute. The following key actions reinforced this conclusion:

(i) obtaining leave in Malaysia for dispensation from reference to the marriage tribunal: the petitioner sought and obtained leave to dispense with the requirement to refer his matrimonial difficulty to the marriage tribunal, as a prerequisite to initiating the Malaysian divorce proceedings. This step underscored his intention to pursue the matter under Malaysian jurisdiction;

(ii) filing the divorce petition in Malaysia: the petitioner had filed his divorce petition in this court, asserting that Malaysia is the suitable forum for the proceedings;

(iii) filing the Singapore stay application: the petitioner filed the Singapore stay application on the basis of *forum non conveniens*, arguing that Singapore was not the appropriate forum for the case;

(iv) resisting the respondent's application in Malaysia: the petitioner resisted the respondent's application to set aside in encl. 17, where she challenged the jurisdiction of the Malaysian court and sought a stay of the Malaysian divorce proceedings;

(v) opposition to the Singapore anti-suit injunction: the petitioner actively defended against the respondent's Singapore anti-suit injunction, which sought to restrain the Malaysian divorce proceedings;

(vi) appeal against dismissal by the Singapore court: the petitioner filed an appeal in Singapore against the dismissal of the Singapore stay application, further signalling his disagreement with the jurisdiction of the Singapore court; and

(vii) filing this application: the petitioner initiated this application, seeking an anti-suit injunction to restrain the Singapore divorce proceedings.

[34] These steps, taken collectively, left no doubt, in my view, that the petitioner had consistently and explicitly contested the jurisdiction of the Singapore court. The petitioner's affidavits and conduct, throughout these proceedings, reflected his unwavering intention not to submit to Singapore's jurisdiction. Consequently, the evidence strongly supported the conclusion

A that the petitioner had maintained a firm and deliberate stance against recognising the Singapore court as the appropriate forum for the Malaysian divorce proceedings.

[35] As such, it was my view that the petitioner had not submitted to the Singapore jurisdiction.

B

Whether Malaysia Is The Natural Forum To Hear The Divorce Proceedings

[36] On the merits, the main issue in determining whether this application should be allowed was whether Malaysia is the natural forum to hear the divorce proceedings between the parties.

C

[37] Malaysia's jurisdiction to adjudicate the divorce proceedings between the parties was beyond question, grounded in several compelling factors. Both parties are Malaysian citizens, their marriage was solemnised within Malaysia, and most critically, they are both domiciled in Malaysia. These elements firmly established Malaysia as the appropriate forum for resolving
D the matter.

[38] The concept of domicile, a cornerstone of jurisdiction in Malaysian family law, was pivotal in this case. In addressing this issue, particular reference was made to s. 3(2) of the Law Reform (Marriage and Divorce) Act
E 1976 ("Law Reform (Marriage and Divorce) Act"). This provision underscored the legal framework governing domicile and its relevance to marital disputes, thereby reinforcing Malaysia's authority to hear and determine the proceedings. The provision reads:

> Section 3 - Application
>
> F (2) For the purposes of this Act, a person who is a **citizen of Malaysia** shall be **deemed**, until the contrary is proved, to be **domiciled in Malaysia**.
> (emphasis added)

[39] The petitioner, a Malaysian citizen born in Miri, Sarawak, is domiciled in Malaysia, thereby establishing a clear connection to the
G jurisdiction.

[40] Under Malaysian law, the principle that a married woman assumes the domicile of her husband upon marriage remains applicable. A married woman cannot establish a separate domicile independent of her husband upon marriage. Instead, she assumes a "domicile of dependence," which
H aligns with her husband's domicile. This principle applies, irrespective of the couple's physical living arrangements, meaning that even if the parties are living apart, the wife's domicile remains tied to her husband's for as long as the marriage subsists. This principle, rooted in common law, was articulated in the landmark case of *Charnley v. Charnley And Betty* [1959] CLJU 12;
I [1959] 1 LNS 12; [1960] 1 MLJ 29 and continues to hold legal authority. The Court of Appeal reaffirmed this position in *Nedunchelíyan Balasubramaniam v. Kohila Shanmugam* [1997] 4 CLJ 676 at 784, emphasising its enduring relevance in Malaysian jurisprudence.

[41] More recently, the High Court had applied this doctrine in several significant cases, including *Khoo Kay Peng v. Pauline Chai Siew Phin* [2014] 10 CLJ 403; [2015] MLJU 158 and *Ramesh Rajaratnam v. SL Sharlini Marnickam* [2018] CLJU 1608; [2018] 1 LNS 1608; [2018] MLJU 1454. These rulings collectively underscored the consistency of the Malaysian courts in upholding the traditional common law stance on domicile in matrimonial matters.

[42] In the present case, the respondent, by virtue of her marriage to the petitioner, was deemed to share his domicile. As the petitioner is domiciled in Malaysia, the respondent had, in turn, acquired a domicile of dependence in Malaysia. This legal linkage underscored her connection to the jurisdiction and reinforced Malaysia's authority to adjudicate the matter. The principle ensures that marital domicile, as a legal construct, remains consistent and unambiguous during the subsistence of the marriage.

[43] My conclusion was further reinforced by the explicit recognition of Malaysia's jurisdiction by the Singapore court. This acknowledgment arose during the Singapore divorce proceedings initiated by the respondent, where the Singapore court unequivocally affirmed Malaysia's authority to adjudicate the matter. Such recognition by a foreign court underscored the strength and legitimacy of Malaysia's jurisdiction in this case.

[44] Moreover, the dismissal of the Singapore anti-suit injunction application by the Singapore court reflected a broader judicial consensus on this jurisdictional issue. In rejecting such application, the Singapore court implicitly endorsed Malaysia's position as the appropriate forum for resolving the dispute. This view was clearly articulated in the judgment delivered by Singapore District Court Judge, Mr Kenneth Yap, who, in his reasoning, affirmed Malaysia's jurisdiction in the following terms:

> 20. In the present case, there is no indication that the case is bound to fail on the merits. **The parties and their children are Malaysian citizens, and the Husband is domiciled in Malaysia. He is fully within his rights to file for divorce in Malaysia**.
>
> (emphasis added)

[45] I firmly concluded that Malaysia is the forum with the strongest and most substantial connection to the parties, as well as the jurisdiction best suited for the fair and proper administration of justice. This determination was based on several critical factual considerations.

[46] To begin with, both the petitioner and the respondent are Malaysian citizens by birth. They were born and raised in Malaysia, with their legal domicile firmly established within the country, reflecting a strong and lasting connection. Notably, the petitioner has consistently resided in Kuala Lumpur, where he continues to live, further reinforcing his deep ties to Malaysia.

[47] Significantly, the petitioner had neither sought nor acquired permanent residency or citizenship in any other country. This absence of foreign ties underscored that his personal, legal, and civic responsibilities are entirely anchored in Malaysia. Malaysia remained his sole and permanent home, with no evidence indicating any meaningful connection to another jurisdiction. These considerations collectively established that Malaysia held the strongest nexus to the parties and is the most appropriate forum for resolving the dispute.

[48] Both parties spent their formative years in Malaysia and continued to reside there well into adulthood, fostering deep and enduring ties to the country. The petitioner's strong connection to Malaysia was evident through the presence of his surviving siblings and extended family, who remained residents of Malaysia. Likewise, the respondent's parents, one of her siblings, and other extended family members also continued to live in Malaysia. These enduring familial ties underscored the parties' lasting bond with their homeland, making Malaysia a central pillar of their personal histories and family lives.

[49] The parties' marriage in Malaysia was a pivotal event that deepened their connection to the country. The children also hold Malaysian citizenship, further underscoring the family's enduring legal and national affiliation with Malaysia. This lasting bond was significant, as both the marriage and the children's citizenship reflected the family's deeply rooted legal, cultural, and personal ties to the country.

[50] It was also noteworthy that, despite residing in Singapore, the respondent's attempts to secure permanent residency there had been unsuccessful. Despite multiple applications, the Singapore Immigration & Checkpoints Authority (ICA) rejected each request, leaving her to reside in Singapore on a temporary basis under an employment pass. This situation was particularly significant, as it underscored the respondent's ongoing legal ties to Malaysia. The inability to obtain permanent residency or citizenship in Singapore highlighted that her legal affiliation remained firmly with Malaysia, the country of her birth and legal domicile. This reinforced Malaysia as her primary and enduring jurisdiction, both personally and legally.

[51] The respondent herself acknowledged the strength of her connections to Malaysia, which were evident in various facets of her life. A notable example was the petitioner's attempt to register a tax-exempt company in the respondent's name with the Chief Minister of Sarawak, underscoring the significance of her ties to Malaysia. This acknowledgment not only highlighted the respondent's substantial legal and personal association with Malaysia, but also demonstrated that her Malaysian connections were

significant enough to be leveraged in business dealings. By utilising her ties to facilitate such transactions, the respondent implicitly reinforced the idea that Malaysia remained central to her legal identity and affiliations. This further solidified the argument that her primary connection lay with Malaysia, both as a citizen and as an individual with meaningful personal and professional ties to the country.

[52] The petitioner's business ventures are predominantly operated in and from Malaysia, establishing Malaysia as the central hub for both his commercial activities and personal residence. This connection extended beyond geography, reflecting the petitioner's substantial investment in Malaysia's economy and active engagement in its business landscape. The petitioner's strong presence was further demonstrated by his directorships in multiple publicly listed companies incorporated in and operated from Malaysia, which underscored his continued involvement in the nation's corporate sector.

[53] This strong connection strengthened the case for Malaysia as the most appropriate forum for the divorce proceedings, particularly given the respondent's monetary claims against the petitioner. The petitioner's extensive business activities and financial interests in Malaysia further reinforced the suitability of the country as the proper jurisdiction for resolving these matters.

[54] Regarding the children, the petitioner acknowledged that the respondent would have actual care and control of them. Consequently, the primary issues to be addressed were related to financial matters, including maintenance for the children and the respondent, as well as the equitable division of matrimonial assets. This framework indicated that the main focus will be on ensuring that the financial needs of the children and the respondent are met, along with determining a fair distribution of the matrimonial assets.

[55] The respondent's argument focused on the inconvenience of conducting the proceedings in Malaysia, particularly due to distance and travel. However, these logistical challenges are no longer decisive factors, given the advancements in modern technology. The widespread use of remote hearings and online trials, now accepted in legal systems globally, offers a practical solution to these concerns. Virtual proceedings have proven to be both efficient and effective in overcoming geographical barriers, allowing full participation without the need for physical presence.

[56] Thus, the inconvenience of distance alone is insufficient to justify moving the forum from Malaysia. The ability to hold remote hearings would ensure that both parties are able to access the judicial process without undue hardship, rendering the respondent's claims of inconvenience untenable. The primary focus, therefore, remained on determining which forum had the most substantial and meaningful connection to the case, rather than simply considering the physical location of the parties.

[57] In light of the factors outlined above, it was evident that Malaysia is the jurisdiction with the most significant and substantial connection to the parties involved. The extensive ties to Malaysia, spanning the petitioner's long-standing residency and business activities, as well as the respondent's personal and familial connections, underscored that Malaysia occupies a central role in the lives of both parties. These deep-rooted connections highlighted the importance of holding the trial in a jurisdiction that is not only legally relevant, but also where the parties and their circumstances are firmly grounded.

[58] My conclusion that Malaysia is the natural and most appropriate forum for determining the divorce was underscored by my decision to dismiss the respondent's application to set aside in encl. 17. That application sought, among other reliefs, a declaration that this court lacked jurisdiction over the respondent, in the context of the divorce proceedings.

[59] In dismissing the respondent's application to set aside, I affirmed this court's competence and jurisdiction to adjudicate the matter, grounded in the substantial and meaningful connections both parties have with Malaysia.

[60] The dismissal by this court of the respondent's application to set aside highlighted a broader recognition of Malaysia's rightful standing as the most appropriate forum for this dispute. This pivotal decision reaffirmed that the divorce proceedings would unfold within a jurisdiction deeply intertwined with the parties' lives, histories, and circumstances. By doing so, it ensured a framework that was not only fair and equitable but also firmly grounded in legal soundness, providing the most fitting context for resolving the complex issues at hand.

Whether Singapore Divorce Proceedings Would Be Vexatious Or Oppressive

[61] One of the issues in deciding whether this application should be allowed was whether the Singapore divorce proceedings would be vexatious or oppressive to the petitioner. This criterion was highlighted in the Court of Appeal case of *BSNC Leasing Sdn Bhd v. Sabah Shipyard Sdn Bhd & Ors & Another Appeal* [2000] 2 CLJ 197, where it was stated in the following passage:

> **Whether the institution or threatened institution of proceedings in a foreign court would be vexatious or oppressive would depend upon the peculiar facts of the particular case**. When deciding this question, a court must have regard to all the circumstances of the case including such matters as comity, the interests of the parties, the connection that the dispute has with the alternative forums and the need to exercise caution when restraining foreign proceedings.
>
> (emphasis added)

[62] In my view, dismissing this application would effectively confine the petitioner to seeking remedies solely in Singapore, a scenario I found to be profoundly unjust and prejudicial to the petitioner for the following reasons.

[63] Unlike Malaysia, Singapore adopts a bifurcated approach to divorce proceedings. This means that the Singapore divorce proceedings is separated into distinct stages, addressing the dissolution of the marriage first, while deferring decisions on other critical matters, such as property division, and other financial issues.

[64] My attention was drawn to s. 112 of the Singapore Women's Charter 1961, outlined as follows:

> Section 112 - Power of court to order division of matrimonial assets
>
> (1) The court has power, **when granting or subsequent to the grant of a judgment of divorce**, judicial separation or nullity of marriage, **to order the division between the parties of any matrimonial asset** or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.
>
> (2) It is the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:
>
> (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial asset;
>
> (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;
>
> (c) the needs of the children (if any) of the marriage;
>
> (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependent of either party;
>
> (e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;
>
> (f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;
>
> (g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and
>
> (h) the matters referred to in section 114(1) so far as they are relevant.
>
> (3) The court may make all such other orders and give such directions as may be necessary or expedient to give effect to any order made under this section.

(4) The court may, at any time it thinks fit, extend, vary, revoke or discharge any order made under this section, and may vary any term or condition upon or subject to which any such order has been made.

(5) In particular, but without limiting subsections (3) and (4), the court may make any one or more of the following orders:

(a) an order for the sale of any matrimonial asset or any part thereof, and for the division, vesting or settlement of the proceeds;

(b) an order vesting any matrimonial asset owned by both parties jointly in both the parties in common in such shares as the court considers just and equitable;

(c) an order vesting any matrimonial asset or any part thereof in either party;

(d) an order for any matrimonial asset, or the sale proceeds thereof, to be vested in any person (including either party) to be held on trust for such period and on such terms as may be specified in the order;

(e) an order postponing the sale or vesting of any share in any matrimonial asset, or any part of such share, until such future date or until the occurrence of such future event or until the fulfilment of such condition as may be specified in the order;

(f) an order granting to either party, for such period and on such terms as the court thinks fit, the right personally to occupy the matrimonial home to the exclusion of the other party;

(g) an order for the payment of a sum of money by one party to the other party.

(6) Where under any order made under this section one party is or may become liable to pay to the other party a sum of money, the court may direct that it must be paid either in one sum or in instalments, and either with or without security, and otherwise in such manner and subject to such conditions (including a condition requiring the payment of interest) as the court thinks fit.

(7) Where, pursuant to this section, the court makes an order for the sale of any matrimonial asset and for the division, application or settlement of the proceeds, the court may appoint a person to sell the asset and divide, apply or settle the proceeds accordingly; and the execution of any instrument by the person so appointed has the same force and validity as if it had been executed by the person in whom the asset is vested.

(8) Any order under this section may be made upon such terms and subject to such conditions (if any) as the court thinks fit.

(9) Where the court, by any order under this section, appoints a person (including the Registrar or other officer of the court) to act as a trustee or to sell any matrimonial asset and to divide, apply and settle the proceeds thereof, the court may make provision in that order for the payment of remuneration to that person and for the reimbursement of that person's costs and expenses.

(10) In this section, "matrimonial asset" means:

(a) any asset acquired before the marriage by one party or both parties to the marriage:

(i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or

(ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and

(b) any other asset of any nature acquired during the marriage by one party or both parties to the marriage,

but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

(emphasis added)

[65] The petitioner's Singapore solicitors opined that the bifurcated approach adopted by the Singapore court meant that the divorce itself could be granted within approximately three to six months. This created a pressing need for this application to be allowed, as failure to do so would effectively prevent the petitioner from seeking any orders from the Malaysian court regarding division of matrimonial assets. This fragmented process could result in prolonged uncertainty and delay for the petitioner in comprehensively resolving all aspects of the divorce.

[66] This urgency arises because, in Malaysia, the court's authority to order the division of matrimonial assets comes into effect only upon the divorce being pronounced. This is clearly outlined in s. 76 of the Law Reform (Marriage and Divorce) Act, which reads:

Section 76 - Power of court to order division of matrimonial assets

(1) **The court shall have power, when granting a decree of divorce** or judicial separation, to order the division between the parties of any assets acquired by them during the marriage or the sale of any such assets and the division between the parties of the proceeds of sale.

...

(emphasis added)

[67] Section 76 of the Law Reform (Marriage and Divorce) Act was interpreted by the Federal Court in *Manokaram Subramaniam v. Ranjid Kaur Nata Singh* [2008] 6 CLJ 209 to mean that the court's power to order the division of matrimonial assets arises only upon the pronouncement of a divorce.

[68] In other words, the Malaysian court's authority to make any order regarding the division of assets is contingent upon the issuance of a divorce decree, and it cannot act before or after the divorce is granted. As such, if a divorce is pronounced in another jurisdiction, such as Singapore in this case, the Malaysian court is disempowered to issue any orders regarding the division of matrimonial assets, even if the assets are located in Malaysia and where Malaysia is the natural forum for the case.

[69] The issue of the Malaysian courts being precluded from ordering the division of assets due to foreign divorce proceedings has been deemed vexatious and oppressive by courts in several cases, including *Sasithorn Marot v. Bruno Marot & Anor* [2019] 3 CLJ 583 and *Tan Chee Khuan v. Ivy Lee Poh Yoke* [2022] CLJU 1197; [2022] 1 LNS 1197.

[70] In *Sasithorn Marot v. Bruno Marot & Anor* [2019] 3 CLJ 583, Rozana Yusoff JC (as she then was) considered an application for an anti-suit injunction for divorce proceedings, which had been initiated in Thailand, to be halted. That case highlighted the conflict between the foreign divorce proceedings and the Malaysian court's jurisdiction to divide matrimonial assets. Her Ladyship found that allowing the Thai divorce proceedings to proceed without restriction would be oppressive to the petitioner in that case, as it would prevent the Malaysian court from exercising its authority over assets located in Malaysia. She emphasised that under s. 76 of the Law Reform (Marriage and Divorce) Act, the Malaysian court's power to divide matrimonial assets would arise only upon the pronouncement of divorce by a Malaysian court.

[71] Her Ladyship concluded that proceeding with foreign divorce proceedings that precluded the jurisdiction of the Malaysian court would be inequitable and unjust, reinforcing the need for the Malaysian court to safeguard its jurisdiction in cases with substantial connections to Malaysia to ensure fairness and proper resolution of matrimonial asset disputes. In the following passage, Her Ladyship stated:

> [24] It is a trite law in Malaysia as granted under s. 76 of the LRA which specifically states that the court shall have power when granting a decree of divorce to order the division between the parties of any assets acquired during the marriage. **Accordingly, once a divorce has been pronounced in the Thai court, the Malaysian court will have no power to order a division of assets, regardless that the assets are located in Malaysia which, in my view, that it will be oppressive** against the petitioner
>
> [25] Taking all these facts and legal positions, I find that **the Thai divorce proceeding is vexatious and oppressive against the petitioner**. On the other hand, there is no injustice to the respondent in the event our court continues and the Thai proceedings is restrained since earlier the respondent has also already submitted to our jurisdiction as to the divorce petition.
>
> (emphasis added)

[72] In *Tan Chee Khuan v. Ivy Lee Poh Yoke*, Azizan Md Arshad JC (as he then was) referenced *Sasithorn Marot v. Bruno Marot & Anor* with approval in granting an application for an anti-suit injunction against Australian divorce proceedings. His Lordship highlighted the relevance of *Sasithorn Marot*, where the court had held that foreign divorce proceedings could effectively prevent the Malaysian court from exercising its jurisdiction over the division of matrimonial assets.

[73] In *Tan Chee Khuan*, His Lordship echoed this reasoning, underscoring the potential injustice and oppression that would arise if the Australian divorce proceedings were allowed to proceed unchecked. He emphasised that the Malaysian court's jurisdiction to divide matrimonial assets under s. 76 of the Law Reform (Marriage and Divorce) Act should be protected, especially in cases where significant connections to Malaysia exist. Accordingly, His Lordship upheld the principles set out in *Sasithorn Marot* and allowed the injunction, reinforcing, in the following passage, the importance of safeguarding Malaysian jurisdiction in such matters:

> [20] **Accordingly, once a divorce order has been granted in Australia, our court will have no power to grant a division of assets, even though the assets are located here. This would be oppressive and vexatious against the husband**. There was no injustice to the wife if the Malaysian court was to proceed as she had also submitted to the Malaysian jurisdiction as to the divorce petition (see *Sasithorn Marot v. Bruno Marot & Anor* [2019] 3 CLJ 583).
>
> (emphasis added)

[74] Similar to the facts in *Sasithorn Marot v. Bruno Marot & Anor* and *Tan Chee Khuan v. Ivy Lee Poh Yoke*, if the respondent, in the present case, was allowed to continue with the Singapore divorce proceedings, the petitioner would effectively be excluded from seeking relief in Malaysia, where he resides and conducts his business activities. This would place the petitioner in a position where he is deprived of the opportunity to address matters pertaining to matrimonial assets in the jurisdiction with the strongest connection to both parties.

[75] I also considered the guidance from several cases, including *Mobikom Sdn Bhd v. Inmiss Communications Sdn Bhd* [2007] 3 CLJ 295; *Lesco Development Corp Sdn Bhd v. Malaysia Building Society Bhd* [1987] 2 CLJ 290; [1987] CLJ (Rep) 160, and *Berjaya Industrial Berhad & Anor v. Public Bank (L) Ltd & Ors* [1995] 4 CLJ 504.

[76] In *Lesco Development Corp Sdn Bhd v. Malaysia Building Society Bhd*, the court emphasised that justice would not be served by having multiple courts handle parts of the same dispute, particularly when the matter is complex.

[77] Similarly, in *Berjaya Industrial Berhad & Anor v. Public Bank (L) Ltd & Ors*, Abdul Malek J (as he then was) had stressed the importance of resolving disputes within a single jurisdiction to avoid fragmented

proceedings and promoting efficiency in addressing all relevant issues. His Lordship adopted the following passage in *Cheshire and North's Private International Law* (12th edn):

> If litigation involving the same parties and the same issues is continuing simultaneously in two different countries, this is referred to as a case of *lis alibi pendens*. In such cases the issue facing the English court is not simply that of deciding to which of the alternative forum the plaintiff should have to go to bring his action. Instead, the choice is between, on the one hand, trial in England plus trial abroad (if a stay is granted). *It is very undesirable to have concurrent actions in England and abroad: this involves more expense and inconvenience to the parties than if the trials were held in merely one country; it can also lead to two conflicting judgments*, with an unseemly race by the parties to be the first to obtain a judgment and to subsequent problems of estoppel ...
>
> (emphasis added)

[78] In my view, to allow the respondent to proceed with the Singapore divorce proceedings, would be vexatious and oppressive to the petitioner, as it was evident that he would incur unnecessary costs in producing extensive documents and securing witnesses for the Singapore court, all of whom and which are based in Malaysia.

[79] Furthermore, once the Singapore court issues orders for the division of assets, any enforcement proceedings would need to be carried out in Malaysia. This would place the petitioner in an onerous and prejudicial position, as he would not only have to defend the Singapore proceedings but also attempt to register the Singaporean court orders in Malaysia before he could enforce them.

[80] The enforcement of these orders, specifically the Singapore court orders in Malaysia, would be burdensome, as even acknowledged by the Singapore District Judge in the Singapore judgment, as follows:

> 33. I did consider that in terms of enforcement, **the Husband may face practical difficulty enforcing an order given by the Singapore court in his favour** ...
>
> (emphasis added)

[81] The respondent argued that the issue of enforcing any order issued by the Singapore court could be addressed through the application of s. 107 of the Law Reform (Marriage and Divorce) Act, which states:

> Section 107 - Maintenance of register of divorces and annulments
>
> (1) The Registrar General shall **maintain a register of divorces and annulments** and shall forthwith enter therein the prescribed particulars of all decrees of divorce and annulment sent to him, under subsection (2) and of all decrees of divorce and annulment for the registration of which application is made under subsection (3).

(2) Every court which grants a decree of divorce or annulment shall forthwith send one certified true copy of the decree to the Registrar General for registration.

(3) Where a marriage which is solemnised in Malaysia is dissolved or annulled by a decree of a court of competent jurisdiction outside Malaysia, either of the parties may apply to the Registrar General for the registration of such decree and the Registrar General, on being satisfied that the decree is one which should be recognised as valid for the purposes of the law of Malaysia, **shall register that decree**.

(4) Where a decree of divorce or annulment, wherever granted, has dissolved a marriage which was solemnised in Malaysia and which has been registered under this Act or any written law in force immediately before the coming into force of this Act, the Registrar General shall, on registering such decree, cause the entry in the register of marriage relating to that marriage to be marked with the word "Dissolved" and a reference to the proceedings in which that decree was granted.

(emphasis added)

[82] In my view, the purpose of s. 107 of the Law Reform (Marriage and Divorce) Act is not to facilitate the enforcement of an order from a foreign court but is limited solely to the registration of a decree of divorce for the purpose of maintaining a record of the parties' marital status.

[83] Consequently, the respondent's reliance on s. 107 of the Law Reform (Marriage and Divorce) Act as a solution to the issue of enforcement was misplaced and held no merit. The reality remained that the petitioner would encounter significant challenges in enforcing any order he might obtain, if at all, from the Singapore court.

[84] On the other hand, after having carefully considered the facts and circumstances of the case, it was clear that granting this application would not result in any injustice to the respondent. The Malaysian divorce proceedings would address all issues between the parties during a single hearing, providing a quicker resolution than the bifurcated ancillary relief process in Singapore, which could extend the legal proceedings. In contrast, the concurrent approach in Malaysia would ensure a more efficient conclusion.

[85] Additionally, I noted that the respondent had filed numerous applications that contributed to delays in the Malaysian divorce proceedings, ever since the petitioner filed the divorce petition. Initially, the Singapore anti-suit injunction application was filed to halt the Malaysian divorce proceedings. She then filed the application to set aside, seeking a declaration that this court had no jurisdiction over her, or alternatively, a stay of the Malaysian divorce proceedings.

[86] In the final analysis, it was vital to recognise that the respondent, despite residing in various countries, including Australia and now Singapore, remained a Malaysian national with enduring connections and roots in Malaysia. Her nationality and legal identity were unequivocally Malaysian, and these ties could not be overshadowed by her current residence abroad. It was neither unreasonable nor unjust to regard her as a Malaysian wife and to apply the rights and legal protections afforded to her under Malaysian law. This approach reflected her intrinsic affiliation with Malaysia, both in terms of nationality and the legal framework she could reasonably expect to govern her marital rights.

[87] Treating the respondent as a Singapore wife solely based on her current residence would unfairly burden the petitioner, particularly when the parties entered their marriage with the understanding that their rights and obligations would be governed by Malaysian legal principles.

[88] Furthermore, applying the law of Singapore could create unanticipated rights and obligations, placing the petitioner at a disadvantage inconsistent with the expectations formed at the inception of their marriage. The fairness of the legal framework should not shift due to a change in geography, especially when the respondent's core legal identity remained firmly tied to Malaysia. Principles of equity, therefore, support treating the respondent as a Malaysian wife, ensuring that the parties' expectations align with their national and legal affiliations rather than being dictated by recent changes in residence.

Whether Allowing This Application Would Offend The Principle Of Comity

[89] A key issue that arose in this application was whether allowing it would offend the principle of comity.

[90] The principle of comity refers to the mutual respect and recognition that courts in one jurisdiction extend to the legal decisions, laws, and judicial proceedings of another jurisdiction. This principle is intended to foster cooperation and consistency, particularly in cases where parties, judgments, or laws span multiple countries or states.

[91] In the Privy Council case of *Société Nationale Industrielle Aérospatiale v. Lee Kui Jak & Ors* [1987] AC 871, the court clarified that an anti-suit injunction is issued *in personam*, in that, it targets the individual (in this case, the respondent), and thus does not offend the principle of comity. The court, in that case, further stated that the granting of an anti-suit injunction did not conflict with the recognition of foreign judgments, as it did not prevent a foreign court from making decisions but simply restrained a party from pursuing legal action in that jurisdiction.

> Second, where the court decides to grant an injunction restraining proceedings in a foreign court, **its order is directed not against the foreign court but against the parties so proceeding or threatening to proceed**.
>
> (emphasis added)

[92] Since the reliefs sought in this application were against the respondent *in personam* and not directed at the Singapore court, such reliefs did not interfere with the judicial independence or processes of the Singapore Court.

[93] Furthermore, the Court of Appeal in *BSNC Leasing Sdn Bhd v. Sabah Shipyard Sdn Bhd & Ors & Another Appeal*, had quoted with approval, the position taken by the House of Lords in *Airbus Industrie GIE v. Patel & Ors* [1998] 2 All ER 257, where it was emphasised:

> In alternative forum cases, in which the choice is between the English forum and some other forum overseas, an anti-suit injunction will normally only be applied for in an English court **where England is the natural forum for the resolution of the dispute; and, if so, there will be no infringement of comity**.
>
> (emphasis added)

[94] In my view, since Malaysia is the natural forum to hear the divorce proceedings between the parties, there was no violation of the principle of comity.

Concluding Remarks

[95] In the final analysis, what this court had to bear in mind was the balance of convenience, which was a critical factor in deciding whether to grant an injunction. In doing so, this court had to weigh the potential harm or inconvenience that would be caused to the parties, and which party would suffer more if this application was allowed or dismissed.

[96] After considering all the facts and circumstances of this case, it was my view that the petitioner would suffer more prejudice and oppression if this application was not allowed, as opposed to the prejudice that the respondent may face if this application was, in fact, allowed.

[97] Hence, in conclusion, after meticulous and judicious consideration of all the evidence presented before this court, along with the submissions put forth by both parties, this application was allowed with costs.